ing full payment and accepting *status* as the test are: *Field* v. *Western Life Indemnity Co.* (Texas Civ. App.), 227 S. W. 530 (death by suicide while in A. E. F.); *Railey* v. *United Life & Accident Ins. Co.* (Ga. App.), 106 S. E. 203 (soldier being transported to France, drowned by accidental collision at sea). Recent cases allowing full payment and adopting the *causation* test are: *Boatwright* v. *American Life Ins. Co.* (Iowa), 180 N. W. 321 (sailor died of influenza at naval training station); *Gorder* v. *Lincoln Nat. Life Ins. Co.* (N. D.), 180 N. W. 514 (pneumonia, evidence of increased risk by reason of camp conditions admissible but insufficient in instant case); *Rex Health & Accident Ins Co.* v. *Pettiford* (Ind. App.), 129 N. E. 248 (death from influenza, at Camp Custer); *Farmers Nat. Life Ins. Co. of America* v. *Carman* (Ind. App.), 132 N. E. 697 (death from pneumonia, while in S. A. T. C.). If the war ended on November 11, 1918, it is clear that the principal case is correctly decided. But that fact is not considered. The question was raised in *Slaughter* v. *Protective League Life Ins. Co.* (Mo. App.), 223 S. W. 819, but left undecided.

LANDLORD AND TENANT—LIABILITY OF LESSOR FOR LEASING PREMISES INFECTED WITH HOG CHOLERA.—Defendant leased his farm to plaintiff. Within one month after plaintiff moved on the farm hog cholera broke out among his hogs and many of them died. Plaintiff sued defendant for damages, alleging, but failing to prove, knowledge by defendant that premises were infected, and that he fraudulently concealed that fact when the lease was made. *Held,* in absence of fraud, or any agreement to the effect that the premises may be safely used for the purposes for which they are intended, defendant is not liable for condition of premises. *Kutchera* v. *Graft* (Iowa, 1921), 184 N. W. 297.

This case is unique on the facts. It is, however, analogous to those cases where the letting of infected premises results in the sickness or death of a tenant or some member of his family. The general rule in such cases is that the lessor is liable, on the basis of negligence, if he had actual knowledge that the premises were infected with a contagious disease when let. There is a duty on him to warn the tenant of such a dangerous condition. *Cesar* v. *Karutz,* 60 N. Y. 229; *Minor* v. *Sharon,* 112 Mass. 477; *Cutter* v. *Hamlen,* 147 Mass. 471; SHEARMAN & REDFIELD, NEGLIGENCE, § 709. Recovery on this basis is difficult inasmuch as the plaintiff must prove that the premises were infected, that the defendant knew of the infection, and that the disease was communicated through the premises. Even if the lessor knew that the premises had been infected, if they were thereafter disinfected by one apparently qualified, the lessor is not liable for the sickness of a subsequent lessee's child. *Finney* v. *Steele,* 148 Ala. 197. While the decision in the instant case may very well rest on lack of proof of defendant's knowledge that the premises were infected, the court expressly adopts and applies the general rule that the lessee has no cause of action unless there has been a fraudulent concealment by the lessor, or a warranty that the premises are fit for the purpose intended. This ruling apparently disregards the well-established distinction between patent and latent defects. As to the former,

the rule of *caveat emptor* applies, and there is no implied warranty that the premises are fit for the purposes for which they are leased. *The Shinkle, Wilson & Kreis Co.* v. *Birney & Seymour,* 68 Ohio St. 328; UNDERHILL, LANDLORD AND TENANT, § 477. However, it is generally admitted that the lessor is liable for loss or injury caused by latent defects in the leased premises, of which he had actual knowledge at the time of making the lease, but which he did not disclose to the lessee. *Mansell* v. *Hands,* 235 Mass. 253; *Johnston* v. *Nichols,* 83 Wash. 394; *Kurtz* v. *Pauly,* 158 Wis. 534. See also note to *Walsh* v. *Schmidt,* 34 L. R. A. (n. s.) 798.

LANDLORD AND TENANT—PROVISION IN LEASE NOT TO ASSIGN WITHOUT CONSENT OF LESSOR—EFFECT OF BREACH.—Petitioners leased to two persons with a provision against assigning or subletting without the written consent of the lessors. A corporation was to be formed by the lessees and it was agreed that they might assign to it on a form which was provided and which bore a place for the lessors' consent. The lessees assigned to this corporation, but not by means of the form provided and without the lessors' consent. After occupation for some time, the corporation became bankrupt, and notwithstanding a notice by the lessors that the lease was forfeited, it was decreed that the trustee in bankruptcy was entitled to the leasehold. Upon review, the court *held,* there had been no effective transfer of the lease to the corporation, and reversed the decree. *In re Lindy-Friedman Clothing Co., Inc.* (U. S. D. C., Ala., 1921), 275 Fed. 453.

It is undisputed that a lease may be assigned or sublet unless the lessee is restrained by statutory provision or by the lease itself. Under the latter category the effect of a breach differs, depending on whether the restraint is by a covenant or by a condition with a power of re-entry. 1 TIFFANY LANDLORD AND TENANT, § 152j; 2 UNDERHILL, LANDLORD AND TENANT, § 624. If it is by a covenant, the general rule is that an assignment in breach of it passes the title of the leasehold to the assignee. *Williams* v. *Earle,* L. R. 3 Q. B. 739; *Meyer* v. *Alliance Investment Co.,* 84 N. J. L. 450. "A covenant not to do a thing really implies the power to do it. An assertion of the breach affirms that the covenantor has effectively done what he covenanted not to do." *Shirk* v. *Adams,* 130 Fed. 441. The only remedy of the lessor is an action for damages against the covenantee. *People* v. *Gilbert,* 64 Ill. App. 203. It is said in *Wray-Austin Machinery Co.* v. *Flower,* 140 Mich. 452, that the assignment works a forfeiture, but the cases cited do not support this *dictum.* See also *Rees* v. *Andrews,* 169 Mo. 177; *Emery* v. *Hill,* 67 N. H. 330. However, if the restraint on assignment is imposed as a condition the lessor may re-enter for the breach and cut off the assignee's estate. *Kew* v. *Trainor,* 150 Ill. 150; *Shattuck* v. *Lovejoy,* 74 Mass. 204. But the breach does not *ipso facto* terminate the estate. It passes to the assignee and is valid until re-entry by the lessor. *Keegan* v. *Heileman Brewing Co.,* 129 Minn. 496; *Taylor* v. *Marshall,* 255 Ill. 545. In the principal case there was a right of re-entry reserved to the lessors for a violation of any provision of the lease. But the opinion of the court is rather obscure as to whether it considered the provision restricting assignment as a covenant or as a